

THE FRESH START

A Periodic Newsletter from the United States Trustee Offices for
Region 11-Wisconsin and the Northern District of Illinois

Summer 2004

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Wisconsin Civil & Criminal Enforcement Training a Big Success

On March 23, 2004, the Madison and Milwaukee U.S. Trustee Offices (USTO) hosted a regional training program titled Civil and Criminal Enforcement in the 21st Century. The training was attended by USTO staff, IRS/Criminal Investigations Division staff, U.S. Attorney's office staff and FBI agents. After opening remarks by both Ira Bodenstein and Steven Biskupic, the U.S. Attorney for the Eastern District of Wisconsin, the training began with a presentation by Region 11 United States Trustee (UST) Ira Bodenstein, and Assistant United States Trustees (AUST) David Asbach (Milwaukee) and Sheree Dandurand (Madison). This portion of the program provided a good background of the Bankruptcy Code and how it applies to the various consumers of the system, and the attempts to abuse the system. At that point the group was joined by J.B. Van Hollen, U.S. Attorney for the Western District of Wisconsin, who emphasized in his remarks the importance of combating fraud and abuse in the bankruptcy system. Then David and Sheree gave an informative presentation on the civil enforcement efforts in the Eastern and Western Districts of Wisconsin. Steven Biskupic followed with a short discussion about the "Problems with Prosecuting Lawyers" and provided thorough and relevant handouts regarding John Gellene and his role in the 1994 Eastern District of Wisconsin bankruptcy case of the Bucyrus-Erie Company. The balance of the afternoon was filled with examples of and techniques for investigating bankruptcy fraud and other white collar crimes. This part of the training was provided by Chicago's Sandra Rasnak, Acting Deputy Chief of the Criminal Enforcement Unit,

Sheree and David. The day was completed with a presentation by Sandra Rasnak and Peter Ainsworth, who was then serving as Chief of the Criminal Enforcement Unit. The thirty-five attendees departed with a folder filled with relevant information, success stories and helpful instructions.

From the Desk of our U.S. Trustee

The Seventh Circuit's decision in Bethea v. Adams, 352 F.3d 1125 (7th Cir. 2003) cert. denied 124 S. Ct. 2176 (U.S. May 17, 2004) has created a change in the way that some Chapter 7 practitioners operate. In Bethea the Court of Appeals held that the unpaid amount of any pre-petition attorneys fees are, like most other pre-petition obligations, discharged in the bankruptcy. Accordingly, those attorneys who previously were retained to file Chapter 7 cases without receiving the full fee in advance can no longer expect to collect the unpaid balance after the filing of the case.

While for a long time I have believed that the practice of filing cases on a less than full payment basis was offered to obtain a competitive advantage, those practitioners that offer that option insist that among other reasons, the Illinois state law garnishment and citation to discover asset procedures often necessitate the filing of the case prior to the client's paying the agreed upon attorney's fee.

Regardless of the rationale for the practice, the Bethea decision posed both an opportunity and a problem for the less than full payment practitioner. The opportunity was that the practice of accepting less than full payment to file a case would disappear in the Northern District of Illinois and this jurisdiction's practices would conform with those in the majority of Bankruptcy Courts in the United States. The problem was that the Bethea decision, in dicta, provided that one solution for the debtor who cannot prepay would be to tender a small retainer for pre-petition work and later hire and retain the same lawyer to complete the remainder of the necessary work, the "bifurcation alternative." The bifurcation alternative wouldn't work because Local Rule 2090-5 states that counsel who represents the debtor upon the filing of a petition in bankruptcy is deemed to appear as attorney of record for the debtor for all purposes including contested matters. This would prevent the careful practitioner from availing himself of the bifurcation alternative because there would be no opportunity to withdraw from the representation if the debtor chose not to enter into the second retention agreement. The Bankruptcy Court addressed this problem by issuing its February 17, 2004 Standing Order which states that "in a case under Chapter 7 of the Bankruptcy Code where (1) the debtor's attorney has agreed to represent the debtor conditioned on the debtor entering into an agreement after the filing of the case to pay the attorney for services rendered after the filing of the case, and (2) the debtor refuses to enter into such an agreement, the Court may allow the attorney to withdraw from representation of the debtor, on motion of the attorney with notice to the debtor, the trustee and the U.S. Trustee."

So while the current state of affairs seems to allow an attorney to unbundle the legal services provided to a debtor filing a Chapter 7 bankruptcy, there are a multitude of legal and ethical considerations which the careful practitioner should review before deciding to undertake the bifurcation alternative. Chief among them are the ethical responsibilities contained in the Rules of Professional Conduct of the United States District Court, LR 83.50.1-LR 83.58.3, which rules are applicable to bankruptcy cases under Local Bankruptcy rule

9029-4. All bankruptcy practitioners should be familiar with these rules. For example, LR 83.51(a) states that “a lawyer shall provide competent representation to a client.” Competent representation requires the legal knowledge, skill, thoroughness and preparation necessary for the representation. In the context of representing a Chapter 7 debtor, and gaining an understanding of the debtor’s financial position to determine whether non-bankruptcy alternatives or a Chapter 13 filing would be more appropriate than a Chapter 7 filing, I would think that this would require a practitioner to gather all the information necessary to complete the petition and schedules at the initial meeting with the client. Query whether this is occurring with those practitioners who are now doing a bifurcated representation of a Chapter 7 debtor. At a minimum, the attorney must explain to the client what services are and are not covered by the initial agreement and at what cost and what additional services would be provided under the subsequent agreement and at what additional cost. Also the client should be told why he or she is required to come back to review and sign additional documents, why two agreements are being requested and the consequences, if any, of not entering into a post-petition agreement.

To the extent that the Illinois Rules of Professional Conduct are also implicated in the use of the bifurcation alternative, practitioners should be mindful of Rule 1.2 (c) which states: “a lawyer may limit the objectives of the representation if the client consents after disclosure.” While this language appears to allow a lawyer to unbundle the services provided, such allowance is tempered by the fact that the client must consent to such limited representation after full disclosure. Disclosure is defined as “communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.” So although use of the bifurcation alternative may be acceptable under this standard as long as the client is informed of the information identified above, I do not believe that this would allow a practitioner to only enter into an initial agreement to file a face petition without the intent to later prepare and file the schedules and statement of financial affairs and attend the § 341 meeting. No fully informed client who is made to appreciate the significance of those further steps should so agree to limit the representation. Also such a practice would violate both the intent of Local Rule 2090-5 and the spirit of the February 17 Standing Order.

Finally, I have noticed a disturbing trend that in instances where the bifurcation alternative is being used, the schedules and statements are not being filed until after a motion prepared by my office under 11 U.S.C. § 707(a) is filed. A practitioner who has fully complied with his ethical obligations under the rules cited above should have fully informed the client of the need to file those critical documents within the 15 day period after the initial filing. The use of our § 707(a) motion as a form of “dunning” letter is both unacceptable and unethical.

In conclusion, should you determine to interpret the Bethea decision as sanctioning use of the bifurcation alternative, do so being mindful of your ethical obligations to your client and the bankruptcy system in which you operate.

National News

Region 10 U.S. Trustee Nancy Gargula and Sandra Rasnak, Acting Deputy Chief of the Criminal Enforcement Unit, spoke at the Indiana 2003 Financial Crimes Conference in Nashville, Indiana, on September 23, 2003. The conference was attended by more than 70 law enforcement officers from throughout the state, members of the Indiana Securities and Exchange Commission, and staff from the Indiana Attorney General and the U.S. Attorney.

News from Region 11

On September 18, 2003, Region 11 had its annual diversity day. This year the guest speaker was a curator from the Art Institute, who spoke about an exhibit tracing Chicago's artistic and cultural links to the West during the 1800s.

During the week of October 8, 2003, Bankruptcy Analyst Tom Thornton from Chicago and Trial Attorney Amy Ginsberg from Milwaukee attended the *Finance Fundamentals* course at the National Advocacy Center (NAC), Columbia, South Carolina.

On October 10-11, 2003, Trial Attorney Richard Friedman attended the American Bankruptcy Institute's Symposium on the 25th anniversary of the Bankruptcy Code, held in Washington, D.C., at Georgetown University.

On November 7, 2003, the Madison office held its annual training for Chapter 7 panel trustees for the Western District of Wisconsin. Ira Bodenstein attended the meeting.

During December 9-11, 2003, Paralegal Specialist Maria Shake from Chicago and David Asbach attended the *Advanced Civil Enforcement* course at the NAC. Sandra Rasnak was an instructor.

In 2003, Madison's Paralegal Specialist Maureen Gaber was nominated for the Attorney General's Award for Excellence in Legal Support. The Attorney General's award for excellence in legal support is designed to recognize outstanding achievements in the field of legal support to attorneys. A nominee must have demonstrated outstanding performance in legal support over a sustained period of time or have displayed extraordinary achievements that overcame unusual difficulties or unique situations of high importance to the mission of the employee's component. Maureen was nominated for her more than fourteen years of exemplary service.

In January 2004, Robert Kasdorf and Claire Ann Resop were appointed to the panel of Chapter 7 trustees for the Western District of Wisconsin.

During the week of January 12, 2004, Legal Clerks Connie Warner (Chicago) and Carol Baumgardt (Milwaukee) attended the *Support Staff Development* course at the NAC.

On January 26, 2004, the Madison office welcomed Bankruptcy Analyst Tom Zeinemann as a new

employee. Tom received his Masters of Business Administration in May from the University of Wisconsin-Whitewater.

During the weeks of January 28-29, 2004, and May 12-14, 2004, Ira Bodenstein and Sandra Rasnak traveled to New Mexico to attend a meeting of the U.S. Trustees in Albuquerque, and to Maryland to attend a meeting of U.S. Trustees in Annapolis.

During February 12-12, 2004, Bankruptcy Analyst Alfreda Baran (Chicago) and Tom Zeinemann attended the *Litigation Support* seminar at the NAC.

On March 4, 2004, Chicago's twenty-first annual Panel Trustee Seminar (Trustee Seminar XXI) was held at the East Bank Club. The seminar was both educational and enjoyable for all. This year, in addition to the usual cast of characters representing panel trustees, UST staff, Bankruptcy Judges, and Bankruptcy Clerk's staff, the Chapter 13 Trustees and several members of their staffs also attended. Perhaps the highlight of this year's seminar was the panel discussing issues arising from cases converting from Chapter 7 to Chapter 13, which included a spirited debate between Gene Crane and Chief Judge Wedoff on the debtor's absolute right to convert. Gene Crane was declared the victor on stylistic points; however, Judge Wedoff's interpretation trumped Gene's passionate oration. Special thanks to Trial Attorney Denise DeLaurent, who organized the seminar, and to Chapter 7 Trustee Barry Chatz, who served as the chairperson of the Trustee Advisory Committee and worked with Denise.

During the week of March 15, 2004, Sheree Dandurand, Bankruptcy Analyst Dennis Kastern (Milwaukee) and Trial Attorney Roman Sukley (Chicago) attended *Advanced Civil Enforcement Training* at the NAC. Sandra Rasnak was an instructor.

During the week of April 19, 2004, Tom Walz, Trial Attorney from Madison, and David Asbach attended *Criminal Bankruptcy Fraud Training* at the NAC. Sandra Rasnak was an instructor. This was the Program's first training session devoted entirely to criminal enforcement.

Richard Friedman was one of the authors and editors of the Department of Justice's "Chapter 11 Trustee Handbook," published in May 2004.

During May 18-20, 2004, Ira Bodenstein attended the *Chapter 7 Panel Trustee* seminar at the NAC.

During May 25-27, 2004, Bankruptcy Analyst Henry Moore (Chicago) and Maureen Gaber attended the *Advanced Criminal Enforcement* seminar at the NAC. Sandra Rasnak was an instructor.

During the last week in June, Keith Manikowski (Chicago) attended the annual *Information Technology (IT) Specialists* meeting at the NAC.

Paralegal Specialist Jennifer (Conrad) Toth got married on October 18, 2003, and went to St. Lucia for her honeymoon. Paralegal Specialist Maria (Shake) Kaplan got married June 26, 2004 on a romantic cruise. Congratulations to Jennifer and Maria. Both work in the Chicago office.

During the last few months, Chicago staff had a population explosion. Paralegal Michele Engel and her husband welcomed a baby boy into their family, and Legal Clerk Patty Brasier and her husband also welcomed a baby boy into their family. Tom Thornton and his family welcomed a new puppy into his family, keeping them all very busy. IT Specialist Keith Manikowski and his wife welcomed Brandon, born July 21, 2004. Brother Ryan got a new brother, and their Labrador Retriever got a new playmate. Congratulations on all the new additions.

Chicago Office Says the NBA is *Fan - Tastic*

On March 26th, a large contingent from the Chicago Office attended that evening's Bulls game at the United Center. Taking advantage of a half-price ticket offer 45 employees and family members saw the Bulls lose to the Milwaukee Bucks 115-105. A



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when the Chicago USTO was officially welcomed by the Bulls on the scoreboard at halftime. Additionally, the promotion that night was turn back the clock to the 1970's and disco fever was in the air. Although the outcome was disappointing a great time was had by all!

Dean Harvalis and wife Pat say "Go Bulls"

Denise DeLaurant and family enjoy the action.

Sylvia Brown and Benita Jones agree that the NBA is **fantastic**

UST Provides Students a Unique Lesson on Bankruptcy System

On January 21, 2004, the Chicago Office hosted fifty-three 7th grade students from the Waters Elementary School of Chicago. During the past two years Ira Bodenstein has participated in the city wide Principal for a Day program by serving as principal at the Waters school. The Chicago office has also donated excess computer equipment to the Waters school. Looking to expand its ties to Waters, Ira Bodenstein, Richard Friedman and Extern Toronda Silas served as hosts to the group of students with six teacher/parent chaperones. Building on the curriculum of the 7th graders which included the study of the Constitution and the Bill of Rights, Ira Bodenstein sent the teachers a lesson plan on citizenship to review with the students prior to the visit. Upon arrival at the USTO, Richard Friedman discussed both the origins of bankruptcy under the Constitution, and the role and mission of the UST in the bankruptcy system with the students. Ira Bodenstein then discussed the rights of citizenship and the differences between citizens and aliens under the

Constitution. To illustrate one major difference a mock presidential primary election was held. Ira Bodenstein, Richard Friedman and Toronda Silas then escorted the group to the Bankruptcy Court where students observed the courtrooms of the Honorable Susan Pierson Sonderby and the Honorable Carol Doyle. At the conclusion of the court calls, each judge then met with the students and discussed the role of a bankruptcy judge. The program was judged a success by all involved.

UST Office Externs

The Chicago USTO has continued to receive assistance from student externs who volunteer their time in exchange for first hand experience in the bankruptcy and governmental fields. From January through March 2004, Toronda Silas worked with us. Toronda was introduced to the bankruptcy field while serving as a summer clerk to U.S. Bankruptcy Judge Raymond Ray in Ft. Lauderdale, and recently received her law degree from the University of Miami.

During the summer months, we have benefitted from two externs, Kim Schriever, a University of Michigan undergraduate in business who has completed her first year of law school at Denver University; and Kelli Biggam, a law and society major who will be entering her senior year at Purdue. All of our externs assist in civil enforcement matters, attend Chapter 7 § 341 meetings, and help with other special projects. Externs who are senior law students may, under appropriate supervision, appear in court on behalf of the UST. We thank our externs for their valuable assistance and wish them well in their future endeavors.

Recent Region 11 Prosecutions

On January 16, 2004, Janice Banyard was sentenced in the Eastern District of Wisconsin to 28 months in prison and ordered to pay more than \$200,000 in restitution, following her conviction for engaging in a scheme to defraud mortgage lenders. Banyard used a Social Security number, falsely obtained for her deceased infant, to obtain mortgage loans she discharged through bankruptcy. Banyard was indicted on charges of Social Security fraud; conspiracy to commit mail, wire, and Social Security fraud; and a false statement in bankruptcy under 18 U.S.C. § 152(3) in relation to her 1998 bankruptcy case. The Milwaukee USTO assisted the U.S. Attorney and FBI with the bankruptcy count.

On January 30, 2004, debtors Kent and Lisa Berheide were indicted in the Western District of Wisconsin for concealing assets, making false oaths, and using bankruptcy as part of a fraudulent scheme under 18 U.S.C. § § 152 and 157. The Berheides concealed their interest in: a camper trailer valued at over \$7,500; state and federal tax refunds of \$8,658; \$19,000 deposited toward the purchase of land in Ohio; a contract to purchase land in Ohio; a one-third ownership interest in real estate in Ohio; and the deposit of \$47,888 into an account in the name of their minor daughter.

Nelida Arroyo Pharm, former employee of a Chapter 13 standing trustee in Milwaukee, was sentenced on March 19, 2004, to 16 months in prison and three years supervised release, and ordered to pay restitution of \$2,945, following her guilty plea on one count of embezzlement. While working for the trustee, Pharm intercepted payments from Chapter 13 debtors, altered them, and sent them to another Chapter 13 trustee

as payment in her own bankruptcy case. A team of bankruptcy analysts from the UST Program investigated and found she embezzled at least 14 payments totaling \$6,264.

Chapter 7 debtor Jean E. Marris of Cedarburg, Wisconsin, pleaded guilty in the Eastern District of Wisconsin on May 24, 2004 to knowingly and fraudulently making material false declarations and statements under penalty of perjury (18 U.S.C. § 152(3)). Marris failed to disclose that, within one year before filing bankruptcy, she sold real estate for \$135,000, paid her brother \$6,000, and paid an attorney \$25,000 to sue the City of Cedarburg. The Milwaukee office referred the case and assisted in the prosecution.

A grand jury in the Eastern District of Wisconsin on May 25 returned a 26-count indictment charging Ronald A. Arthur and his wife Mary K. Arthur (a/k/a Kathleen M. Arthur) with bankruptcy fraud and money laundering. Ronald was most recently a real estate lawyer and consultant, and Mary, a nursing home administrator who was formerly a district attorney. The indictment charged that: they conspired to conceal assets from their bankruptcy trustee; Ronald made false statements under oath by failing to disclose more than \$237,000 in assets; and they engaged in money laundering with the concealed property, including paying their mortgage, purchasing a personal water craft, and making credit card payments.

Recent Court Decisions

Upholding the position taken by the United States acting as amicus, on January 14, 2004, the U.S. Supreme Court ruled in *Kontrick v. Ryan* that the requirement in Bankruptcy Rule 4004(a) that a complaint objecting to a bankruptcy discharge "shall be filed no later than 60 days" after the meeting of creditors is not jurisdictional and is subject to waiver. The Courts of Appeals were divided on the issue. The Program assisted in the drafting of the government's amicus brief.

The U.S. Supreme Court on May 17, 2004 decided a dispute over the rate of interest that secured creditors may receive on debts in Chapter 13 repayment plans. In *Till v. SCS Credit Corporation*, the court ruled for an Indiana couple who claimed a lender should not be permitted to charge 21 percent interest on a truck loan as part of their Chapter 13 repayment plan. In a plurality opinion, the court held the contract rate was not the presumptive rate to use in the debtors' plan. The ruling permits the couple to seek an interest rate based on the prime lending rate, adjusted for risk of non-payment. The Executive Office of the U.S. Trustees (EOUST) assisted the Appellate Staff of the Civil Division and the Solicitor General's Office in briefing the case. The Department took the plurality position, advocating for use of prime rate plus a risk factor.

Notable Chapter 11 Developments

The Chicago USTO, on December 11, 2003, successfully prosecuted an action revoking plan confirmation in the Chapter 11 case of Stephen Sadin, a Chicago bankruptcy attorney and *pro se* debtor. Sadin failed to disclose that, less than three weeks before confirmation, he was disbarred on consent after admitting that he misappropriated \$48,305 from senior citizen bond holders whom he represented in a securities fraud case, converted \$84,181 in escrow funds, and issued checks drawn on

closed bank accounts. Sadin also failed to list the victims of his misappropriations as creditors in his case. In addition to revoking plan confirmation and discharge, the UST required Sadin to waive discharge under all Bankruptcy Code chapters before allowing dismissal of his case.

On January 22, 2004, the Bankruptcy Court for the Northern District of Illinois denied a motion by individual Chapter 11 debtor Virgil Liptak to, in effect, seek reconsideration of the court's prior dismissal of his case. The court issued an opinion discussing the limitations on bankruptcy court jurisdiction to review final state court orders under *Rooker-Feldman*. When Liptak filed Chapter 11 bankruptcy, he listed approximately \$4 million in assets and approximately \$2 million in debts arising from a judgment obtained by his ex-wife. Liptak argued the judgment was procured through fraud in the Texas court system, which prevented meaningful review by that court system. The Chicago USTO assisted the ex-wife's attorney in an evidentiary hearing on a motion to dismiss. The court dismissed the case on January 6, 2004 with a nationwide one-year bar to refiling, finding that Liptak, who was declared a vexatious litigant in Texas, would likely use further court proceedings to avoid paying on the judgment.

On May 19, 2004, the court confirmed the fifth amended plan in Emerald Casino, 02-22977. The UST's objections to a prior plan that provided releases from third parties to non-debtor parties were resolved by amendments that authorized only consensual releases.

Civil Enforcement Actions

Civil Enforcement Update

The Chicago UST office continues to aggressively pursue cases involving abuses of the bankruptcy process. In the past few months, efforts have continued to focus on petition preparers, credit card bustouts, other discharge cases, and § 707(b) substantial abuse cases. As part of this process, Chicago staff attend § 341 meetings for selected cases in Cook County. In the collar counties where it is not practical for our staff to attend § 341 meetings, we may ask the panel trustees to report back to discuss results of meetings in selected cases. We typically use information obtained from the § 341 meetings to assist in determining whether to pursue a matter further through formal discovery. We appreciate the panel trustee's cooperation in this important area.

Petition Preparers

Trial Attorney Roman Sukley has been aggressively pursuing bankruptcy petition preparer *Eddie Dunn*. In 2000, the UST obtained injunctive relief against Dunn which prohibited him from engaging in the unauthorized practice of law. Since that time Dunn has filed significant numbers of cases as a petition preparer. Recently, in three unrelated cases involving two Chapter 13 debtors and one Chapter 7 debtor, the UST filed motions for statutory fines and disgorgement of fees, as well as adversaries seeking to enjoin Dunn from serving as a preparer. In all of these actions, the UST alleged that Dunn violated terms of the 2000 injunction by engaging in conduct which constitutes the unauthorized practice of law.

Roman also successfully enjoined bankruptcy petition preparer *Raymond Fitzgerald* from acting as a petition preparer. In February and March 2004 the USTO filed a motion for statutory fines and disgorgement of fees, which was granted. When Fitzgerald failed to pay the fines, the USTO obtained an order of civil contempt. Concurrently, in another case, the UST filed an adversary seeking to permanently enjoin Fitzgerald from serving as a petition preparer. Both the contempt order and injunctive relief have been entered and Fitzgerald has disappeared. Fitzgerald also filed his own Chapter 7 during this time frame, and the USTO successfully barred his discharge, arguing that Fitzgerald failed to disclose his petition preparer income.

Trial Attorney Steve Wolfe continues to prosecute his litigation against bankruptcy petition preparer *We the People*. Steve commenced his adversary in 2002, naming *We the People* (the national franchiser), and *Donald Karel* (who operates the Chicago area franchise), as defendants, seeking statutory fines and injunctive relief. The USTO successfully defended motions to dismiss brought by both defendants. Cross-motions for summary judgement are now pending and are under advisement. *We the People* has raised constitutional issues with § 110, which were briefed and argued in June 2004.

Trial Attorney Richard Friedman filed an adversary complaint on April 26, 2004, seeking to enjoin bankruptcy petition preparer *Anson B. Shareef* from acting as a petition preparer. An evidentiary hearing was held on June 29, 2004, and the Court took the matter under advisement.

Richard has also been successful in pursuing bankruptcy petition preparer *Gregory Norman*. Pursuant to Richard's efforts, Norman was permanently enjoined from acting as a bankruptcy petition preparer on April 28, 2004. Norman was also ordered to return fees to a debtor, and fined \$1,500 by the Bankruptcy Court.

Credit Card Bustouts - Discharge

On September 29, 2003, the Chicago USTO obtained an order denying discharge for Taleb A. Heyasat, who was involved in a credit card bust-out. Heyasat initially stated his \$136,000 in credit card debt was due to gambling losses and business losses at a dollar store he operated. The UST subpoenaed his 20 credit card issuers and determined he engaged in a "bust-out" by charging at least \$51,000 in goods or cash advances from May 22-28, 2001. Immediately before and during this period, Heyasat transmitted at least eight payments totaling around \$35,000 to various card issuers to make it appear he was making significant payments on these accounts. The card issuers extended credit upon receipt of the payments, all of which were subsequently reversed for insufficient funds. In the meantime, Heyasat used his credit cards to buy marketable goods, including electronics and cigarettes, and to take cash advances.

On November 12, 2003, the USTO obtained denied of discharge for Chapter 7 debtor Wasfi Azar, who owed around \$271,000 on some 26 credit card accounts. Credit card records showed he grossly inflated his income in obtaining certain cards, and engaged in substantial purchases of marketable goods, including a motorcycle and electronics, in a two-month period.

On November 20, 2003, the Chicago USTO obtained denial of discharge for Chapter 7 debtor Adnah H. Abu Halal, who owed approximately \$90,000 on some 20 credit cards. Credit card statements revealed Halal engaged in substantial transactions in May 2002, taking numerous cash advances and purchasing marketable goods. In response to discovery, Halal's counsel said he was advised Halal had left the country.

The Bankruptcy Court for the Northern District of Illinois, on December 1, 2003, approved a waiver of discharge by Chapter 7 debtor Jackson A. Arahi, who was the subject of a complaint by the City of Chicago regarding fraud against taxi owners. Arahi managed taxi licenses ("medallions") owned by third parties. He leased cabs to drivers, collected revenues from the drivers, paid expenses such as insurance and bank loans to acquire the medallions, and provided a return to the owners and a profit for himself. Before he filed bankruptcy, the city alleged he collected the cash but ceased paying expenses, which resulted in lenders foreclosing on the owners' medallions. The Bankruptcy Court initially held the city's action was not excepted from the automatic stay as an exercise of police power, and Arahi pursued contempt actions against the city for violating the stay. An investigation by the Chicago USTO showed, however, that Arahi should have received around \$286,000 during the period when he failed to pay the expenses. After the USTO discussed this information with debtor's counsel, the debtor consented to all relief requested by the city and waived the discharge of approximately \$647,000 in scheduled debt.

The Bankruptcy Court for the Northern District of Illinois, on January 22, 2004, approved a waiver of discharge by Akhikhar I. Chlimoun, preventing the Chapter 7 discharge of \$181,000 in unsecured debt—almost all of it credit card debt. Chlimoun testified at the § 341 meeting that he incurred most of the debt through casino gambling. He also confirmed information obtained by the Chicago USTO that he received \$128,000 in real estate sale proceeds within two years before filing bankruptcy, although he testified he lost that money gambling. Through discovery, the USTO learned the debtor took more than \$117,000 in cash advances in the year pre-petition and bought more than \$44,000 on credit from retail and home improvement stores within two months pre-petition.

On February 24, 2004, the Bankruptcy Court for the Northern District of Illinois, approved the waiver of discharge executed by Chapter 7 debtor Mohammed R. Baig, who had received approximately \$635,000 from eight individuals for investment purposes. The individuals appeared at the § 341 meeting, but Baig did not appear and his counsel said he had traveled to Pakistan for family matters. After discussions with the Chicago USTO, counsel agreed Baig should execute a waiver of discharge telephonically. After executing the waiver, Baig sought dismissal of his case but the USTO objected, moving to compel his attendance at a Bankruptcy Rule 2004 examination to explain the whereabouts of the investors' funds. The court ordered Baig to return and appear at an examination on April 15, 2004. Ultimately, Baig testified telephonically from Pakistan, and his testimony allowed the secured creditors to locate their collateral.

The Bankruptcy Court for the Northern District of Illinois on July 8, 2004 entered default judgment against Khaled Abdelnabi Muza, denying his discharge and preventing the Chapter 7 discharge of \$162,662 in credit card debt. Muza listed \$4,679 in assets and monthly income of \$2,500. The Chicago USTO

conducted a Rule 2004 exam of the debtor, during which he failed to satisfactorily explain his high credit card debt and lack of assets. In addition, Muza did not provide requested documents regarding his alleged failed businesses. Accordingly, the USTO objected to his discharge under 11 U.S.C. § 727(a)(3) and (5). Shortly thereafter, Muza's counsel withdrew, and Muza failed to file an answer or appear at a court-ordered status hearings.

§ 707(b) - Substantial Abuse

On September 4, 2003, on motion of the Chicago USTO, the Bankruptcy Court for the Northern District of Illinois dismissed Chapter 7 debtor Larry J. Thomas' case for substantial abuse, preventing a discharge of \$123,919 in unsecured debt. Thomas sought to retain two residential properties and three luxury cars, including a Cadillac Escalade and a Cadillac DeVille.

Debtor Ann M. Talan converted to Chapter 13 on November 10, 2003 in the Northern District of Illinois, preventing a Chapter 7 discharge of \$136,640, of which 97 percent was credit card debt. Together, the debtor and her non-filing spouse had more than \$190,000 in gross annual income. The debtor's excessive monthly expenses included \$750 in medical costs although she had full family health insurance coverage through her employer. After Trial Attorney Cameron Gulden from the Chicago USTO questioned the debtor at the § 341 meeting and asked for additional documentation, her attorney advised her to convert to Chapter 13.

On January 6, 2004, the Bankruptcy Court for the Western District of Wisconsin granted the USTO's motion to dismiss the Chapter 7 case of Wade Matthew Dennis, a single optometrist earning approximately \$75,000 per year. Shortly after paying his bankruptcy attorney, the debtor paid \$6,800 toward the purchase of a new 2003 Audi A4 and \$11,727 for new tile and wood floors in his condominium. The debtor testified at his creditor meeting that he kept track of his credit card payments on a computer spread sheet. Review of his statements showed that he gradually increased the aggregate balance on his 12 credit cards by making payments slightly in excess of the required monthly payments.

On February 25, 2004, Chapter 7 debtors Richard and Helene Himebaugh voluntarily converted their case to Chapter 13 in response to the filing of a motion to dismiss by the Madison USTO, preventing the discharge of \$23,284.75 in unsecured debt. The debtors earned approximately \$130,000 in 2001 and 2002, and \$173,000 in 2003.

Chapter 7 debtors Timothy and Connie Leo converted to Chapter 13 on March 15, 2004, preventing the discharge of \$192,302, mostly credit card debt. The debtors, with no dependents, had an annual gross income of \$81,484. They listed several high and unreasonable expenses and, when questioned by an attorney in the Chicago USTO, agreed to convert to Chapter 13 rather than face a motion to dismiss for substantial abuse.

Debtors Earl and Doreen Clark converted to Chapter 13 on April 30, 2004 in the Northern District of Illinois, preventing the Chapter 7 discharge of \$142,208 – of which 99 percent was credit card debt. The debtors had annual gross income of \$95,794 and over \$1,200 per month in disposable income. After questioning by an attorney in the Chicago USTO, the debtors agreed to convert to Chapter 13 rather than face a motion to dismiss for substantial abuse.

CM/ECF Update

The transition to electronic filing is continuing rapidly during the summer months. All practitioners can now sign up for training as to how to file documents electronically at the court's website at www.ilnb.uscourts.gov. Practitioners who complete this training will receive a password that allows them to file pleadings, including new petitions, electronically.

Our panel trustees have been receiving special attention from the court. First, the court's IT staff has been working with the panel trustees to install software at the trustee's business location. This software permits the trustees to receive their petitions electronically, and to easily download their assigned petitions by § 341 hearing date to a CD. Also, the court is providing customized training for the panel trustees which will permit the trustees to electronically file their no asset reports, as well as other pleadings. Panel trustees who have not had the software installed or have not attended the training should do so immediately. We greatly appreciate the efforts of the Clerk's Office, and particularly those of Steve Horvath, Manager of Information Technology, and Jean Dalicandro, Operations Manager, during this transition.

For more information about this newsletter, or for additional copies, please contact: Alfreda Baran, Bankruptcy Analyst, USTO, 227 West Monroe, Suite 3350, Chicago, Illinois 60606, (312) 886-5785, or email: alfreda.baran@usdoj.gov